



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

Environmental
Protection Agency-Reg 2

2016 APR 14 PM 3:13

REGIONAL HEARING
CLERK

APR 12 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven P. Mella, President
ComStar International Inc.
20-45 128 Street
College Point, New York 11356

Re: In the Matter of ComStar International Inc.
Docket No. FIFRA-02-2016-5203

Dear Mr. Mella:

Enclosed is the Complaint and Notice of Opportunity for Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

You have the right to a formal hearing to contest any of the allegations in the complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within *thirty (30)* days of your receipt of the enclosed Complaint to the Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

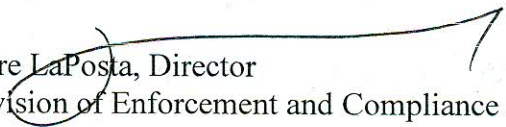
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the Consolidated Rules of Practice, which govern this proceeding. For your general information and use, I also enclose both an Information Sheet for U.S. EPA Small Business Resources and a Notice of SEC Registrants Duty to Disclose Environmental Legal Proceedings, which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on EPA's Supplemental Environmental Projects Policy. Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

RECEIVED HEARING
OFFICE
2016 APR 14 PM 3:13
U.S. Environmental
Protection Agency-Reg 2

-----X
In the Matter of :
 :
ComStar International, Inc., :
 :
 : COMPLAINT AND NOTICE OF
 : OPPORTUNITY FOR HEARING
 :
Respondent. :
 :
 : Docket No. FIFRA-02-2016-5203
 :
Proceeding Under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended. :
-----X

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

Jurisdiction

1. This is an administrative proceeding commenced pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a)(1), to assess a civil penalty against Respondent for having committed acts made unlawful under the provisions of Section 12(a)(1) of FIFRA, 7 U.S.C. § 136j(a)(1).
2. This tribunal is vested with jurisdiction over this proceeding pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. § 22.1(a)(1).
3. Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2.
4. Complainant has been duly delegated the authority to institute this proceeding.

Operative Statutory and Regulatory Definitions

5. Pursuant to Section 2(a) of FIFRA the term “active ingredient” is defined to mean, in relevant part an “ingredient which will prevent, destroy, repel, or mitigate any pest” and/or “an ingredient which, through physiological action, will...retard the rate of growth or maturation of ornamental...plants....”

6. In Section 2(s) of FIFRA, 7 U.S.C. § 136(s), the term “person” is defined to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”¹

7. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term “pest” has been defined to mean “any insect, rodent, nematode, fungus, weed, or...any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or living in man or other living animals) which the Administrator [of the EPA] declares to be a pest under section 136w(c)(1) of this title [Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1)].

8. Forty C.F.R. § 152.5 provides, in relevant part, that “[a]n organism is declared to be a pest under circumstances that make it deleterious to man or the environment if it is...[a]ny plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root....”

9. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term pesticide is defined to mean (with exceptions not relevant to this proceeding) “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest...[and] any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant....”

10. Forty C.F.R. § 152.5 defines, in relevant part, the term “pesticide” to mean “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant....”

11. Pursuant to Section 2(v) of FIFRA, 7 U.S.C. § 136(v), the term “plant regulator” is defined, in relevant part, as “any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants....”

12. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), the term “producer” is defined, in relevant part, as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.”

13. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), the term “produce” is defined, in relevant part, as “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

14. Pursuant to Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), the term “establishment” is defined as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

¹ Unless specifically stated otherwise, terms or phrases defined by reference to specified statutory and/or regulatory definitions are subsequently used in this Complaint as so defined.

15. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), “to distribute or sell” is defined to mean “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

Authority to Assess Penalty

16. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides, in part, that “[a]ny... wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter [subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y] may be assessed a civil penalty by the Administrator [of EPA] of not more than \$5,000 for each offense.”

17. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), to \$7,500 for any violation occurring on or after January 12, 2009.

18. Section 14(a)(3) of FIFRA, 7 U.S.C. 136l(a)(3), provides that “[n]o civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged.”

19. This “COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING” (“Complaint”) constitutes the aforementioned (¶ 18, above) notice.

Respondent’s Identity and Operations, Generally

20. Respondent is ComStar International, Inc. (“Respondent”).

21. Respondent is a for-profit corporation existing, and organized since March 1990, under the laws of the State of New York.

22. Since its formation in March 1990, Respondent has been, and continues to be, a “person” (as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s)).

23. Respondent owns and operates a facility located at 20-45 128th Street in College Point (Queens County), New York 11356 (hereinafter “Respondent’s facility”).

24. Since 1990, and at all subsequent times relevant to the matters herein alleged, Respondent has been commercially manufacturing, receiving, repackaging and/or re-labeling industrial chemicals, including refrigerants, sealants for air conditioning systems, drain cleaners, microwave oven cleaners, hornet & wasp killer sprays, other pesticides, heat transfer fluids,

chemical plumbing products, metal & ceramic cleaners, and industrial lubricating oils at Respondent's facility.

25. For all times relevant to the matter alleged herein, Respondent's facility has been registered under Section 7 of FIFRA, 7 U.S.C. § 136e, with EPA having assigned it EPA Establishment Number 055279-NY-001.

26. Respondent is a producer of pesticides.

27. Respondent commercially distributes or sells the aforementioned (§ 24, above) chemicals to nationwide wholesale and/or retail establishments.

28. At Respondent's facility, pesticides are held for distribution or sale.

29. Respondent is a distributor or seller of pesticides.

30. As a consequence of and/or in connection with Respondent's aforementioned (§s 26 through 29, above), commercial activities, Respondent is a "registrant," "wholesaler," "dealer" and/or "other distributor" of pesticides within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

31. As a consequence of Respondent's aforementioned (§s 26 through 29, above) commercial activities, Respondent, in carrying out such activities, is subjects to the requirements of FIFRA, 7 U.S.C. § 136 *et seq.*, and the regulations promulgated pursuant thereto, including 40 C.F.R. Part 152.

Respondent's Handling of Triangle Brand Product

32. Prior to 2010, Respondent periodically purchased a plant regulator known as Triangle Brand Copper Sulfate Crystal (hereinafter, "TBCSC"), bearing EPA registration number 1278-8, manufactured by Phelps Dodge Refining Corporation of El Paso, Texas (the "base registrant").

33. Respondent purchased the TBCSC from a third-party, Faesy & Besthoff, LLC.

34. Respondent made the purchases of the TBCSC in order to repack it at, and/or in order to distribute or sell it from, Respondent's facility.

35. The active ingredient of TBCSC is copper sulfate pentahydrate.

36. Since sometime prior to 2010, TBCSC has been a pesticide registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, with EPA registration number ("Reg. No.") 1278-8.

37. Sometime prior to 2010, Respondent executed, pursuant to 40 C.F.R. § 152.132, a supplemental distribution agreement for the distribution or sale of the TBCSC under the brand name “Root Gobbler.”

38. Pursuant to 40 C.F.R. § 152.132, a person who has registered a pesticide with EPA “may distribute or sell his registered product under another person’s name and address instead (or in addition to) his own[,]” with such distribution or sale deemed “a supplemental registration[,]” provided EPA has been notified and if the conditions specified in said section have been met.

39. Up through some time in 2010, Respondent re-packaged, and distributed or sold, the TBCSC pursuant to the aforementioned (§ 37, above) supplemental distribution agreement.

40. Among the aforementioned (§ 38, above) conditions set forth in 40 C.F.R. § 152.132 is sub-section (d)(4), which provides that the label of the product distributed or sold pursuant to supplemental registration must include “[t]he establishment number...of the final establishment at which the product was produced.”

41. Respondent distributed or sold the TBCSC under the brand name “Root Gobbler” and with labels bearing the supplemental EPA Reg. No. 1278-8-55279.

42. As a consequence of Respondent’s aforementioned (§ 41, above) labeling and distribution or sale thereof, Respondent has been a producer, and a distributor/seller, of “Root Gobbler.”

43. On or about July 10, 2010, at the request of the base registrant, EPA canceled the registration of the TBCSC, thereby nullifying and making inoperative EPA Reg. No. 1278-8.

44. Pursuant to 40 C.F.R. § 152.132(e), “Voluntary cancellation of a product applies to the registered product and all distributor products [as defined in that section] distributed or sold under that registration number.”

45. Pursuant to 40 C.F.R. § 152.132(e), the aforementioned cancelation of the TBCSC registration (including the cancelation of its EPA registration number) canceled the supplemental registration of the “Root Gobbler,” thereby nullifying and making inoperative the supplemental EPA Reg. No. 1278-8-55279.

EPA’s Inspection of Respondent’s Facility

46. On or about August 7, 2013, employees of EPA conducted an inspection of Respondent’s facility (the “August inspection”) for the purposes of enforcing the provisions of FIFRA, 7 U.S.C. §§ 136-136y, and the regulations promulgated pursuant thereto.

47. The August inspection was conducted under the authority, and pursuant to the provisions, of Section 9(a) of FIFRA, 7 U.S.C. § 136g(a).

Count 1: Distribution/Sale of Misbranded Pesticide

48. Complainant repeats and realleges each and every allegation set forth in paragraphs “1” through “47,” above as if expressly set forth herein.

49. Beginning in 2010, Respondent periodically purchased a product known as Quimag Quimicos Aguila Copper Sulfate Crystal, EPA Reg. No. 73385-1 (hereinafter, “QQA”) manufactured in Mexico by Fabrica de Sulfato el Aguila.

50. Respondent made the aforementioned (¶ 49, above) purchases from a third-party, Faesy & Besthoff, Inc.

51. QQA’s active ingredient is copper sulfate pentahydrate.

52. Since at least 2009, QQA has been (and continues to be) a pesticide registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, with EPA Reg. No. 73385-1.

53. Beginning in 2010, Respondent re-packaged and relabeled the QQA as “Root Gobbler.”

54. Respondent never entered into a supplemental distribution agreement with Fabrica de Sulfato el Aguila to distribute or sell the QQA under a different name.

55. Respondent re-packaged and distributed or sold the QQA with labels bearing the same EPA registration number (*i.e.* EPA Reg. No. 1278-8-55279) that Respondent previously used to distribute or sell the “Root Gobbler” it had produced from TBCSC.

56. On or about each of the following dates Respondent distributed or sold containers of the aforementioned (¶ 55, above) Root Gobbler to a customer in Memphis, Tennessee:

- a) June 20, 2011;
- b) August 12, 2011;
- c) December 7, 2011;
- d) February 28, 2012;
- e) April 13, 2012;
- f) July 13, 2012;
- g) September 28, 2012; and
- h) December 28, 2012.

57. Each aforementioned (¶s 55 and 56, above) distribution or sale of Root Gobbler constituted a distribution or sale of a misbranded pesticide.

58. Any distribution or sale of a pesticide that has been misbranded is made unlawful by (*i.e.* constitutes a prohibited act under) Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and thus constitutes a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E)).

59. A violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) constitutes a violation of a provision of subchapter II of FIFRA, 7 U.S.C. §§ 136 -136y.

60. Each aforementioned (¶s 55 and 56, above) distribution or sale of a misbranded pesticide constitutes an unlawful act pursuant to and in accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 2: Submitting Erroneous and False Information

61. Complainant repeats and realleges each and every allegation set forth in paragraphs “1” through “7,” “53” through “56,” above, as if expressly set forth herein.

62. Pursuant to Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), “Any producer operating an establishment registered under this section [of FIFRA] shall inform [EPA] within 30 days after it is registered of the types and amounts of pesticides” that the producer “is currently producing[,]. . .has produced during the past year[,], and . . .has sold or distributed during the past year.”

63. In relevant part, 40 C.F.R. § 167.85(a) states, “[e]ach producer operating an establishment must submit the reports required by this section concerning any pesticide. . . .”

64. In relevant part, 40 C.F.R. § 167.85(d) provides, “the producer must submit an annual report [as prescribed by 40 C.F.R. § 167.85(a)] on or before March 1 of each year. . . .”

65. For each of calendar years 2011 and 2012, Respondent reported production of “Root Gobbler,” EPA Reg. No. 1278-8-55279, on the annual pesticide-producing establishment reports it submitted to EPA as required by Section 7(c) of FIFRA, 7 U.S.C § 136e(c), and 40 C.F.R. § 167.85.

66. The aforementioned (¶ 65, above) reporting of production of EPA Reg. No. 1278-8-55279 was erroneous and false.

67. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides, in relevant part, that “it shall be unlawful for any person . . .who is a producer to violate any of the provisions of”:

a) Section 7 of FIFRA, 7 U.S.C. § 136e; and

b) 40 C.F.R. § 167.85.

68. Respondent's aforementioned (§s 65 and 66, above) submission of erroneous and false information for each of calendar years 2011 and 2012 constituted an unlawful act pursuant to (*i.e.* constitutes a prohibited act under):

- a) Section 7 of FIFRA, 7 U.S.C. § 136e; and
- b) 40 C.F.R. § 167.85.

69. A violation of each of the following provisions constitutes a violation of a provision of subchapter II of FIFRA, 7 U.S.C. §§ 136 -136y:

- a) Section 7 of FIFRA, 7 U.S.C. § 136e; and
- b) 40 C.F.R. § 167.85.

70. Respondent's aforementioned (§§ 65 and 66, above) submissions of erroneous and false information for each of calendar year 2011 and 2012 constituted a violation of each of the following provisions of subchapter II of FIFRA, 7 U.S.C. §§ 136 -136y.

- a) Section 7 of FIFRA, 7 U.S.C. § 136e; and
- b) 40 C.F.R. § 167.85.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended. For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires that EPA "shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation." Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, with specific reference to EPA's "FIFRA Enforcement Response Policy [for] The Federal Insecticide, Fungicide and Rodenticide Act," dated December 2009 (hereinafter referred to as the "ERP"). A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://www.epa.gov/enforcement/fifra-enforcement-response-policy>. This guidance policy provides rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria enumerated above to particular cases.

Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in this Complaint:

Counts 1: Distribution/Sale of a Misbranded Pesticide \$ 45,400
(eight separate distributions/sales @ \$7,500 each, with adjustments in accordance with the ERP, based upon knowledge possessed by EPA at the time of the issuance of the complaint)

Count 2: Submitting Erroneous and False Information..... \$ 15,000
(submission of erroneous and false information in two separate reports @\$7,500 per report, with adjustments in accordance with the ERP, based upon knowledge possessed by EPA at the time of the issuance of the complaint)

Total (rounded to the nearest \$100) \$ 60,400

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS, and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint (40 C.F.R. § 22.15(a)). Such Answer must be filed within 30 days after service of a Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, N.Y. 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action (40 C.F.R. § 22.15(a)).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge (40 C.F.R. § 22.15(b)). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied

(40 C.F.R. § 22.15(b)). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing (40 C.F.R. § 22.15(b)).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing. B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held (40 C.F.R. § 22.15(c)). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication (40 C.F.R. § 22.15(c)).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely (*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17(a)). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). (40 C.F.R. § 22.17(d)). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Filing Of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse “initial decision” (as defined in 40 C.F.R. § 22.3) to the Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review (40 C.F.R. § 22.27(d)).

In order to appeal an initial decision to the EAB Respondent must do so within “30 days after the initial decision is served” (40 C.F.R. § 22.30(a)). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, “5 days shall be added to the time allowed by these [rules] for the filing of a responsive document.” Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations (40 C.F.R. § 22.18(b)). At an informal conference with representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant’s calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent’s ability to continue in business, and (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Lee A. Spielmann
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, N.Y. 10007-1866
212-637-3222
Spielmann.lee@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing (40 C.F.R. § 22.18(b)(1)). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement (40 C.F.R. § 22.18(b)(2)). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement (40 C.F.R. § 22.18(b)(2)). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed (40 C.F.R. § 22.18(b)(3)).

Respondent's entering into a settlement through the signing of such Consent Agreement terminates this administrative litigation and civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable FIFRA statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment (40 C.F.R. § 22.18(a)). Such payment shall be made by cashier's or certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation listing the name of the matter (*In re ComStar International, Inc.*) and the Docket Number (FIFRA-02-2016-5203).

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045**
- 3) Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
- 4) Federal Reserve Bank of New York ABA routing number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read **D 68010727**
- Environmental Protection Agency**
- 6) I/M/O **ComStar International, Inc.**
- 7) Case Number: **FIFRA-02-2016-5203**

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, N.Y. 10007-1866


Lee A. Spielmann
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, N.Y. 10007-1866

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's

receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order. Issuance of this Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to obtain review of said Final Order in federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable FIFRA statutory and regulatory requirements, and to maintain such compliance.

Dated: APRIL 12, 2016
New York, New York

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. E.P.A. Region 2

TO:

Steven P. Mella, Chief Executive Officer
ComStar International, Inc.
20-45 128th Street
College Point, New York 11356

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, captioned *In the Matter of ComStar International, Inc.* and bearing docket number **FIFRA-02-2016-5203**, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Steven P. Mella, Chief Executive Officer
ComStar International, Inc.
20-45 128th Street
College Point, New York 11356

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated 4/14, 2016
New York, New York